

The Case for Ratification: 1990 UN Convention on the Protection of Migrant Workers' Rights

Summary of Key Issues

The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 entered into force in June 2005. The Convention represents the most comprehensive instrument available to date defining the social, economic and cultural rights of migrant workers and their family members.

Bangladesh is a signatory, but is yet to ratify, the Convention. This policy brief is part of a prolonged and sustained campaign of RMMRU since 1999 for ratification of the Convention. It is prepared to mark the International Migrant Workers Day on 18 December 2007 and to reiterate civil society demands to the Government of Bangladesh to respect the rights of migrant workers by ratifying the Convention.

The Convention

The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (hereinafter referred to as 'the Convention') entered into force in June 2005. The Convention is the most comprehensive instrument available to date defining the rights of migrant workers and their families. It recognises the vulnerability of migrant workers and their family members, and their need for international protection.

Article 2 of the Convention defines a migrant worker as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.' The Convention recognises the need to provide protection not only to migrant workers but also to their family members, without discrimination (articles 4, 7).

The Convention distinguishes between regular and irregular migrant workers, recognising that whilst regular migrant workers have a legitimate claim to more rights, it is important to safeguard the fundamental human rights of all.

Importance of Migration to Bangladesh

Labour migration from Bangladesh has a long history, with the Government of Bangladesh promoting international labour migration as part of an overall development plan since 1976.

It is estimated that there are 4.55 million Bangladeshis working abroad as migrant workers, with over 90% living in the Middle East and countries of South East Asia. This excludes the Bangladeshi diaspora in the UK and North America, estimated at a further 1.5 million persons.

Migration plays a critical role in sustaining the Bangladeshi economy. In 2005-06, official remittances into Bangladesh constituted \$4.8 billion, equal to 7.73% of GDP and over three times higher than net aid flows into Bangladesh. It is estimated that in 2006-07 remittances will exceed \$6 billion.

The employment of Bangladeshis overseas reduces pressure on the labour market within Bangladesh. In addition, it has supported domestic job creation in both the public and private sectors.

A new ministry has been created and the size of other ministries and departments, like civil aviation, customs and immigration departments and the Bureau of Manpower Employment and Training is, to a large extent, determined by the flow of migrant workers. A powerful private sector has emerged centering around the processing of migration, employing 2 million persons as private recruiting agencies, sub-agents, travel agencies, medical centers and transportation workers.

Vulnerabilities of the Migrant Labour Force

Bangladeshi migrant workers have suffered from unscrupulous recruitment practices, leading to high costs, fraudulent practices and pauperisation. In destination countries, due to the arbitrariness of employers and discriminatory policies of receiving states, migrants have experienced exploitation and the loss of rights in the form of low and irregular wages, bad working conditions and restrictive job mobility. Upon return, Bangladeshi migrants experience difficulties in reintegrating due to the absence of an institutional support system.

Bangladesh : Signatory to the Convention

In 1997 the Government of Bangladesh agreed, in principle, to ratify the Convention and sought the advice of the Law Commission in this regard. The Law Commission observed that the Convention has only a minor provision that contradicts the legal system of Bangladesh, which it felt could be addressed easily by entering a reservation. According to the Law Commission, otherwise the Convention could be ratified.

Accordingly, on 7 October 1998 Bangladesh signed the Convention; but still has not ratified the instrument. This is despite an active campaign by the civil society and policy advocates and the huge significance of the labour migration sector to country's economy.

The key justification offered for non-ratification of the Convention is the concern that it may affect Bangladesh's overseas labour market and foreign exchange earnings from this sector. There is a fear that as other migrant sending countries have not yet ratified the Convention, Bangladesh will find it more difficult to send workers abroad.

These concerns are not based upon any research. In the negotiations between delegations of the Bangladesh government and labour receiving countries, the latter never expressed any concern about this convention. Besides, other major labour sending countries have ratified the Convention, notably Egypt, the Philippines, Sri Lanka and Syria. These countries have not faced adverse repercussions in sending their workers.

If Bangladesh ratified the Convention its obligations would be: to put in place the provisions of pre-departure information campaigns and training sessions; monitoring and imposition of sanctions on

brokers and recruiters operating illegally; and the provision of extending improved consular services to citizens working abroad.

Over the years, the Government of Bangladesh has taken some important measures to better govern the migration sector. It has established a new ministry, prepared a strategy to explore and consolidate labour markets, and introduced a system of recruitment through a computerised database. More importantly, in 2006 Bangladesh became the first country in South Asia to legislate an Overseas Employment Policy. The policy empowers both men and women the right to choose overseas employment from an equal stand. It respects the dignity and security of workers and ensures the social protection of the left behind families of migrants.

The current caretaker government has undertaken a series of measures to curb the irregularities in the recruitment industry and has greatly increased

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market access on better terms and conditions. In the recent past, it has proactively responded to the problems faced by migrant workers in Malaysia by sending high level delegations, suspending High Commission staff suspected of malpractice, increasing the number of labour attaches and dissolving the executive committee of the Bangladesh Association of International Recruiting Agencies (BAIRA).

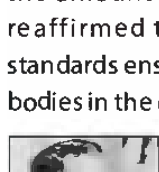
One can see that successive governments, out of their own concern about migrants' vulnerability have undertaken the above steps which involved financial commitment. Therefore the point often raised by the members of bureaucracy that ratification of the convention would put Bangladesh into major financial commitment may not be that important. Besides, good business sense should make the government commit resources to a sector that has fetched US\$6 billion net of foreign exchange in 2007. There is no doubt that investment in migrant protection measures will substantially increase earnings from the sector.

Views on Ratification

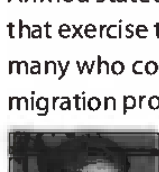
A national policy dialogue on 'Safe Migration and Remittances', was organised jointly by the Daily Star and RMMRU on 10 June 2007.



The Honourable Adviser to the Ministry of Foreign Affairs and Ministry of Expatriate of Expatriate Welfare and Overseas Employment, Dr Iftekhar Ahmed Chowdhury, appreciated civil society's keen interest for ratification of the Convention. He assured that the government would re-examine the ratification issue afresh with an open mind. He acknowledged that there are important budgetary and internal market determinant issues, as well as global labour market dynamics to be addressed before accepting all the obligations arising out of the Convention. He reiterated that there is '... no reason why we should not be able to pursue this issue given the amount of public interest' in Bangladesh. He reaffirmed the desire of the government to set standards enshrined in the UN and other international bodies in the case of labour migration.

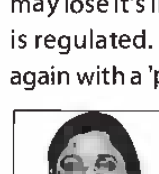


Dr Justice Syed Refaat Ahmed, praised the Convention as playing a 'pivotal and crucial role in the development of human rights standards and the rules of state conduct and responsibility.' He stated that '...the question we should be asking ourselves as to ratification is not merely "when" but additionally "how best to be in effective compliance"'. Acknowledging the 'cautious and gradual steps' now taken towards ratification, Justice Dr Syed Refaat Ahmed stated '...there is no reason why we cannot see that exercise to its desired conclusion for the benefit of many who continue to be exploited at all stages of the migration process'.



Ms Rokia Afzal Rahman, former advisor, Ministry of Labour, Caretaker Government 2001, stated that 'When I was the advisor I was told by the bureaucracy that if we ratify the Convention the receiving countries can be upset but I think this will be a temporary feature which will be resolved over time but ratification will help our migrant workers with better protection. I definitely want to see the Convention ratified'.

Mr Md. Touhid Hossain, Secretary-in-Charge, Ministry of Foreign Affairs, acknowledged the need to protect the rights of migrant workers and disagreed with those arguing that Bangladesh may lose its international labour market if the industry is regulated. He pledged to look into the Convention again with a 'positive set of mind'.



Shaheen Anam, Executive Director of the Manusher Janno Foundation and a human rights activist, pointed out that even though Bangladesh will not be able to enforce rights of its workers in the receiving countries as they have not ratified the Convention, Bangladesh will still have to submit a report to the UN annually on the reforms conducted. This itself establishes accountability. Besides, the civil society can also submit reports to the UN once Bangladesh is party to the Convention.



Mr Saiful Haque, Chairman of WARBE, a migrant workers association, stated that at the United Nations High Level Dialogue on Migration and Development in New York, the Government of Bangladesh, in its statement, emphasised 'efforts needed to fully eliminate exploitation and discrimination to ensure fair treatment, decent work and minimum wage to migrants'. He felt that to ensure such standards '...it is obligatory for Bangladesh to ratify the Convention'.



Professor Tasneem Siddiqui argued that since the late 1990s successive Governments of Bangladesh have taken brave steps for maintaining and expanding its share in the global labour market. It has opened the door for its unskilled and semiskilled female workers to join the international labour market. In its overseas employment policy, it has committed to consider misconduct against migrants as an act against the national interest. Bangladesh is going to be the first country in the world to introduce a customer protection law to ensure the accountability of financial actors in remittance transfers. Given its previous history of commitment towards international standards, it is only rational that it will uphold the same commitment when it comes to labour migrants by ratifying the Convention.

Why Should Bangladesh Ratify?

- Bangladesh is a major sending country and in protecting the rights of its migrant workers it should do its utmost to meet international standards. The 1990 Convention provides the best framework to such protection.
- Being the most important foreign exchange earning sector further financial commitment, to the sector that may be entail ratification, will likely to increase efficiency of the agencies concerned, protect the migrant workers from vulnerability, improve the welfare services and further increase the remittance flows.
- Experiences of Sri Lanka and the Philippines inform that ratification will not adversely affect Bangladesh's relationships with labour receiving countries.
- Ratification will convey the message that the government cares for its migrant workforce. It will also enhance Bangladesh's image as a country that upholds migrants' rights.
- The Bangladesh Law Commission has recommended ratification of the Convention.

RMMRU's Appeal

On behalf of the 4.5 million Bangladeshi short-term migrant workers and 1.5 million long term diaspora, their associations and different civil society bodies, RMMRU urges the Government of Bangladesh to immediately ratify the Convention and frame national legislation to implement the provisions of the Convention.

Acknowledgements

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the other partners include the Centre for Economic and Social Research, Tirana, Albania, the Forced Migration and Refugee Studies Centre of the American University of Cairo, Egypt, the Institute of Social, Statistical and Economic Research and Regional Institute for Population Studies at the University of Ghana, and the School of Development Studies at the University of East Anglia.

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Further Reading

This policy brief has been prepared based on the following documents:

- Siddiqui, T (Eds.) 1998 *National Responsibility towards the Migrant Workers*, Occasional Paper, RMMRU, Dhaka
- Siddiqui, T 2001 *Transcending Boundaries: Labour Migration of Women from Bangladesh*, UPL, Dhaka
- Piper, N & Iredale, R 2004 *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers 1990: the Asia Pacific Perspective* Working Paper No. 14 Asia Pacific Migration Research Network, Australia
- *Rights and Dignity of Migrant Workers* (in Bangla), RMMRU, 1999
- International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, homepage posted on <http://www.migrantsrights.org>
- Office of the United Nations High Commissioner for Human Rights, homepage posted on <http://www.ohchr.org>

All quotations are from the National Policy Dialogue on Safe Migration and Remittances jointly organised by Daily Star and RMMRU and held in Dhaka on 10 June 2007. The dialogue was supported by the Manusher Janno Foundation. The text of the dialogue is available on <http://www.rmmru.net>.

Other Policy Briefs of RMMRU are available on <http://www.rmmru.net>

Comments on this Policy Brief are welcome. They may be sent to:

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